

**REMARKS**

This Amendment is responsive to the non-final Office Action mailed October 7, 2008. Applicants respectfully request (i) entry of these amendments and remarks and (ii) reconsideration and allowance of the amended application.

**Status of the claims**

The Office Action reports examination of originally filed claims 1-29.

Claims 11-23 and 26-29 stand rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter.

Claims 1-29 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Yan et al., U.S. Publ. Appl. No. 2004/0103438 A1 (hereinafter "Yan").

**Specification Amendment**

The Office Action objected to the abstract, stating "it does not comply with 37 CFR § 1.72" (Office Action page 3), with particular note that "The sheet or sheets presenting the abstract may not include other parts of the application or other material". *Id.*

Applicants have amended the abstract page to remove the title, as well as to remove reference numbers from the abstract. Applicants note that the abstract is well under 150 words, and that the title "Abstract of the disclosure" is as authorized by MPEP § 608.01(b).

Accordingly, Applicants respectfully request that the amendments to the abstract page be entered, and that the objection to the abstract be withdrawn.

**The claims present patentable subject matter  
and should be allowed**

Claim 1-29 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Yan. However, it is respectfully submitted that Yan does not qualify as § 102(e) prior art as against claims 1-29.

Yan has a filing date of November 27, 2002, and neither the reference on its face nor PAIR indicate any priority for the Yan reference predating this filing date. Accordingly, for § 102(e) purposes Yan has a date of November 27, 2002.

The present application claims priority to Provisional application no. 60/405,177 filed August 22, 2002, which predates the Yan filing date. The Office has not alleged that any claim presented in the present application is unsupported by Provisional application no. 60/405,177.

Accordingly, Applicants respectfully submit that the § 102(e) rejections of claims 1-29 should be withdrawn.

There being no other pending rejection of claims 1-10, 24, and 25, Applicants respectfully request allowance of claims 1-10, 24, and 25.

Claims 11-23 and 26-29 also stand rejected under § 101 as allegedly directed toward nonstatutory subject matter.

In response, claims 11-16 and 26-29 are amended herein to be directed to a statutory storage medium, paralleling language used in claims 24-25.

Similarly, claims 17-20 are amended herein to be directed to a statutory control program, paralleling language used in claims 1-10.

Claims 21-23 are amended herein to recite a statutory apparatus comprising a computer including an operating system and an application program and a storage medium encoding instructions which when executed on the computer define a control program operating under the operating system.

Accordingly, Applicants respectfully request that these claim amendments be entered, and that the § 101 rejections be withdrawn.

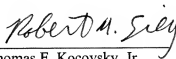
There being no other pending rejection of claims 11-23 and 26-29, Applicants respectfully request allowance of claims 11-23 and 26-29.

**CONCLUSION**

In view of the foregoing, Applicants respectfully submit that the application including all claims 1-29 as set forth herein present set forth patentable subject matter, meet all statutory requirements, and should be allowed. Accordingly, Applicants respectfully request allowance of the application including all claims set forth herein.

Respectfully submitted,

FAY, SHARPE LLP



Thomas E. Kocovsky, Jr.

Reg. No. 28,383

Robert M. Sieg

Reg. No. 54,446

The Halle Building, 5<sup>th</sup> Floor

1228 Euclid Avenue

Cleveland, OH 44115

Phone: (216) 363-9000

Fax: (216) 363-9001